

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CARLOS TORRES, et al., on behalf of  
themselves and all others similarly situated,

Plaintiffs,

vs.

GRISTEDE'S OPERATING CORP., et al.,

Defendants.

Case No. 04-CV-3316 (PAC)

OSCAR AMARO, et al., on behalf of  
themselves and all others similarly situated,

Plaintiffs,

vs.

GRISTEDE'S OPERATING CORP., et al.,

Defendants.

Case No. 08-CV-8531 (PAC)

DAVID BARRETO, et al., on behalf of  
themselves and all others similarly situated,

Plaintiffs,

vs.

GRISTEDE'S OPERATING CORP., et al.,

Defendants.

Case No. 08-CV-9627 (PAC)

Robert L. Herbst declares under penalty of perjury pursuant to 28 U.S.C. § 1746  
that the following is true and correct:

1. I am a practicing attorney in New York, New York. This declaration is  
submitted in support of plaintiffs' application for attorneys' fees and costs.

2. I am Senior Counsel to the firm Giskan Solotaroff Anderson and Stewart LLP. I have focused on private civil and criminal litigation since 1983. My current practice focuses primarily on civil rights and employment litigation, and on employment, housing, and disability discrimination. I have repeatedly been selected as one of New York's SuperLawyers, and have served on the Executive Board of the New York affiliate of the National Employment Lawyers' Association and the Advisory Board of New York University's Center for Labor and Employment Law.

3. I received my BA degree from Princeton University in 1969 and graduated in 1972 from Yale Law School. I am admitted to practice before the courts of the State of New York and the district courts of the Southern and Eastern Districts of New York and the Eastern District of Pennsylvania, the Second and Seventh Circuit Courts of Appeal, and the United States Supreme Court. Prior to my current firm affiliation, I was one of the managing partners of the Beldock Levine & Hoffman LLP law firm.

4. Because of the importance of fee-shifting to the employment law and civil rights practice, I make an effort to remain current with practitioners' current hourly rates and developments in attorneys' fees awards in New York's state and federal courts.

5. I have known the lawyers at Outten & Golden LLP ("O&G") for many years. I believe that O&G is one of the top employment law firms in New York City and in the country. O&G has a strong national reputation for its particular expertise prosecuting wage and hour class actions.

6. I believe that a reasonable client and class representative in a wage and hour class action would choose O&G's lawyers, especially Adam Klein and Justin Swartz, to represent him or her because of their skills and record of success. Although

class representatives in class actions rarely pay by the hour, it would be a sensible and wise decision for a hypothetical hourly-paying class representative to choose O&G over other firms with lower rates because of O&G's superior record of success.

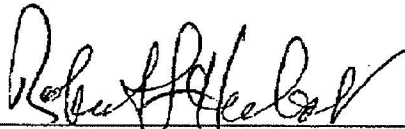
7. Based on my knowledge of the New York employment law market and the abilities of O&G's lawyers, I believe that Mr. Klein's requested hourly rate of \$740 and Mr. Swartz's requested hourly rate of \$600 per hour are reasonable and appropriate. I have reviewed the affidavit describing the work done in this case by O&G and the requested hourly rates that plaintiffs are seeking for other O&G lawyers who worked on this case and believe that they are reasonable and appropriate as well.

8. My current hourly rate for private hourly-paying clients is \$725. My firm's hourly rates currently range from \$555 to \$725 for partners and Senior Counsel, and \$285 to \$415 for associates.

9. I know the hourly rates for experienced lawyers representing plaintiffs in employment law litigation in this community generally range from \$425 to \$900 per hour. Certainly the rate for experienced partners of Outten & Golden LLP, which is a premier firm with high standards in this field, should be at the high end of this range. Similarly, the requested hourly rates ranging between \$290 and \$400 for O&G associates are wholly reasonable.

10. I am not associated with either party in this action and have no financial interest in the outcome of this case. I am not being paid for submission of this declaration.

REDACTED

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Robert L. Herbst

Dated: New York, New York  
June 28, 2011